IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE
MISDEMEANOR DIVISION

IN RE: PETITION OF
KNOX COUNTY PUBLIC DEFENDER

Docket No. _____

RESPONSE TO "PETITION TO SUSPEND APPOINTMENT OF THE DISTRICT PUBLIC DEFENDER TO DEFENDANTS IN THE KNOX COUNTY GENERAL SESSIONS COURT, MISDEMEANOR DIVISION"

I. BACKGROUND

In a letter dated June 15, 2007, (copy attached) and addressed to Knox County's five General Sessions Judges, Knox County Public Defender Mark E. Stephens ("the Public Defender") raised the issue of "Continued Representation of Citizens in the Knox County General Sessions Courts, Misdemeanor Division, by the Knox County Public Defender and Staff." (2007 letter at 1.) The Public Defender asserted that his office had experienced an increase in caseloads, writing,

> In fiscal year 04/05 our total cases exceeded 21,000. That number included 9,175 cases in Knox County General Sessions Court Misdemeanor Division . . . . In fiscal year 05/06 our total caseload has approached 23,000 cases. That number included 9,204 cases in Misdemeanor division."

(2007 letter at 1.) The letter asserted that total caseloads had risen each of the preceding five years, from 16,976 in FY01/02 to 22,735 FY05/06. (2007 letter at 4.) Citing both his office's ethical obligation not to take on more cases than it could effectively handle and his clients' right to effective assistance of counsel, the Public Defender wrote that as of July 1, 2007, he would cease accepting any new appointments in the Misdemeanor Division. (2007 letter at 6.)

The Public Defender did not cease accepting appointments. Instead, on July 17, 2007, the Public Defender appeared before the General Sessions Judges to address the matter. Elizabeth A. Sykes, Director of the Administrative Office of the Courts (AOC), and Susan Mattson, Senior

Legislative Research Analyst, Office of the Comptroller of the Treasury, appeared with the undersigned to express concerns about the Public Defender's threatened action and the significant new expense it would represent to AOC to pay for counsel for indigent criminal defendants in any court which the Public Defender abandoned. The meeting concluded with the understanding that the Public Defender would confer with state officials to explore whether some alternative could be found to the Public Defender's chosen course of action.

No meeting took place. Instead, on September 6, 2007, the Public Defender, now represented by Chattanooga attorney T. Maxfield Bahner, met with the General Sessions Judges and the state officials. The Public Defender, through counsel, assured the General Sessions Judges that he would produce a more detailed paper supporting his case.

That paper was produced some six months later, on March 26, 2008, when the Public Defender filed a twenty-eight page "Sworn Petition to Suspend Appointment of the District Public Defender to Defendants in the Knox County General Sessions Court, Misdemeanor Division" ("the petition"). That petition is set to be heard on June 10, 2008, nearly a year after the Public Defender initially raised the issues at hand.

The petition reiterates the Public Defender's request to be relieved from accepting further appointments in the Misdemeanor Division. The petition alleges that that there is a caseload crisis not in the Misdemeanor Division, but rather in the Felony and DUI Divisions of the General Sessions Court as well as Divisions I and II of the Criminal Court. (Petition at 2.) The petition sets out caseload numbers for FY2006 and FY2007. (Petition at 5-13.) The petition goes on to discuss defendants' right to counsel, lawyers' ethical obligations to effectively represent those defendants, and various standards for public defender caseloads. (Petition at 15-26.) The petition asserts that the Public Defender's caseloads are excessive and therefore asks that the Public Defender be excused from his duties in the Misdemeanor Division.

II. ARGUMENT

A. INTRODUCTION

There has been no discovery in this case; the only facts asserted are those alleged in the petition. This response is therefore akin to a motion to dismiss. Accordingly, while the facts alleged in the petition remain open to question, they will largely be accepted for purposes of this response only. They are not otherwise currently accepted or admitted for any purpose whatsoever.

B. SUMMARY OF ARGUMENT

The Public Defender's petition seeking permission to vacate his duties to the Knox County General Sessions Court, Misdemeanor Division, should be dismissed for at least two reasons. First, the General Sessions Court lacks subject matter jurisdiction both to entertain the substance of the petition and to do as a body of judges. A general sessions court's jurisdiction is limited solely to matters and proceedings expressly conferred upon it by statute. The Public Defender has pointed to no statute authorizing a panel of general sessions court judges to excuse him wholesale from his duties to any particular division of general sessions court, particularly when the Public Defender makes no claim that he cannot continue to effectively represent clients in that division.

Second, the Public Defender's petition and supporting affidavits may make a powerful case that the Public Defender's Office is overworked and understaffed, which is a problem faced by many state attorneys. However, the petition fails to provide clear and convincing evidence that the Public Defender cannot continue to effectively represent his clients. To the contrary, his own figures show a decreasing caseload.

C. THE GENERAL SESSIONS COURT JUDGES LACK THE STATUTORY AUTHORITY TO SIT AS A PANEL AND ENTIRELY AND INDEFINITELY EXCUSE THE PUBLIC DEFENDER FROM HIS DUTIES TO THE MISDEMEANOR DIVISION, ESPECIALLY WHEN THE PUBLIC DEFENDER HIMSELF MAKES NO CLAIM THAT HE CANNOT CONTINUE TO EFFECTIVELY REPRESENT CLIENTS IN THE MISDEMEANOR DIVISION.

General sessions courts are "courts of limited jurisdiction." *Ware v. Meharry Medical College*, 898 S.W.2d 181, 183 (Tenn. 1995). General sessions courts' "jurisdiction . . .extends only to the limits defined by statute law." *Traveler's Indemnity Co. v. Callis*, 481 S.W.2d 384, 385 (Tenn. 1972). In *Caldwell v. Wood*, 2004 WL 370299, at *2 (Tenn. Ct. App. at Jackson February 27, 2004) (copy attached), the Court of Appeals reiterated that "[t]he jurisdiction of General Sessions Courts is limited to that set out by statute" before going on to decide whether a general sessions court had been within its statutory authority when it had set aside its judgment. The Court of Appeals noted that no statute expressly authorized the general sessions court to set aside a judgment. *Id.* However, the general sessions court had interpreted Tenn. Code Ann. § 16-15-727 (1994), which permitted a general sessions court to *correct* its judgments, to authorize a general sessions court also to *set aside* its judgments. *Id.* at 1. The Court of Appeals disagreed, writing, "The plain language of the statute, however, simply does not address the setting aside of judgments." *Id.* at *3. The Court of Appeals concluded that the party defending the general sessions court's decision "cites no case in which this statute, or any other, has ben deemed to authorize the General Sessions Courts to set aside their own judgments. In the absence of express statutory authorization, we must conclude that the General Sessions Court in this case was without authority to set aside its judgment." *Id.*

Thus, in order for the Public Defender's petition to proceed, the Public Defender must point to "express statutory authorization" for the General Session Court Judges of Knox County to relieve him *carte blanche* of his duty to accept appointments in the Misdemeanor Division. The Public

Defender has not done so and cannot do so because there is no such authority.

In fact, the "plain language" of the relevant authority is contrary to this action. The Legislature has broadly authorized the Supreme Court to adopt rules governing the appointment of counsel to indigent criminal defendants. Tenn. Code Ann. § 40-14-206. Rule 13 of the Rules of the Tennessee Supreme Court authorizes a general sessions court to appoint counsel to represent indigent criminal defendants. Tenn. Sup. Ct. R. § 1(c). The Rule further provides:

> When appointing counsel for *an indigent defendant* . . . the court shall appoint the district public defender's office, the state post-conviction office, or other attorneys employed by the state for indigent defense (herein "public defender") if qualified pursuant to this rule and no conflict of interest exists, unless in the sound discretion of the *trial judge* appointment of other counsel is necessary. Appointment of public defenders shall be subject to the limitations of Tenn. Code Ann. §§ 8-14-201 et seq.

Tenn. Sup. Ct. R. 13 § 1(e)(4)(A) (emphases added). The "limitations of Tenn. Code Ann. §§ 8-14-201 et seq," which relate to Public Defenders, do not include any express statutory authorization permitting general sessions court judges, sitting as a panel or individually, to relieve a Public Defender of his duty to appear in any particular court or to represent a particular class of defendant.

It appears, then, that Tenn. Sup. Ct. R. 13 remains the only possible source of authority for a general sessions court to the supply the relief sought by the Public Defender. However, as even the Public Defender has conceded, there is no "express statutory authorization" to be found there either. Instead, the Rule clearly contemplates that in an *individual case*, the general sessions court may determine whether or not to appoint a particular lawyer for "*an indigent defendant,*" Tenn. Sup. Ct. R. 13 § 1(e)(4)(A) (emphasis added), not for a class of defendants or court. Furthermore, the decision is made by "*the trial judge,*" Tenn. Sup. Ct. R. 13 § 1(e)(4)(A) (emphasis added) in that individual case alone, not by a panel of judges prospectively and indefinitely relieving the Public Defender from all future duties to any court or class of defendant.

Similarly, Rule 13 also provides that:

> *The court* shall not make *an appointment* if counsel makes a clear and convincing case that adding *the appointment* to counsel's current workload would prevent counsel from rendering effective representation in accordance with constitutional and professional standards.

Tenn. Sup. Ct. R. 13 § 1(e)(4)(E) (emphases added). Again, the plain language of the statute provides that the decision must be made by one court adjudicating one individual case, not a panel of judges adjudicating a Public Defender's petition to abandon a class of cases or a class of courts.

The Public Defender has not pointed to any "express statutory authorization" for a panel of the General Sessions Judges of Knox County to supply the relief that he has requested because no such authorization exists. Absent such authorization, the Knox County General Sessions Judges have no jurisdiction to entertain the Public Defender's petition. Accordingly, the petition should be dismissed for lack of subject matter jurisdiction.

D. THE PETITION AND ITS SUPPORTING DOCUMENTS DO NOT SATISFY THE REQUIREMENT OF TENN. R. SUP. CT. 13 OF A CLEAR AND CONVINCING SHOWING THAT THE PUBLIC DEFENDER'S LAWYERS IN THE MISDEMEANOR DIVISION CANNOT CONTINUE TO ACCEPT APPOINTMENTS IN THAT DIVISION WITHOUT JEOPARDIZING THEIR ABILITY TO PROVIDE EFFECTIVE REPRESENTATION.

As just noted, Rule 13 provides that:

> The court shall not make an appointment if counsel makes a clear and convincing case that adding the appointment to counsel's current workload would prevent counsel from rendering effective representation in accordance with constitutional and professional standards.

Tenn. Sup. Ct. R. 13 § 1(e)(4)(E).

The Rule puts the burden on the Public Defender to prove his case by clear and convincing evidence. The Public Defender's "heightened burden of proof minimizes the risk of erroneous decisions." *In re Audrey S.*, 182 S.W.3d 838, 860 (Tenn. Ct. App. 2005). This standard requires the Public Defender's petition to "eliminate[] any serious or substantial doubt" that the court has

"about the correctness of the conclusions drawn from the evidence." *Id.*

In light of the heightened burden place upon the Public Defender, this response must prove nothing in order to defeat the Public Defender's petition. The petition must be denied if this response raises substantial or serious doubt as to whether the Public Defender has shown that his six lawyers assigned to the Misdemeanor Division can no longer accept appointments without jeopardizing their ability to represent both current and new clients.

The Public Defender's petition itself raises such doubts in several respects. First, while the petition seeks the suspension of appointments in the Misdemeanor Division, the petition admits that there is no problem in the Misdemeanor Division. The petition claims that the "crisis" is not with the caseloads of the lawyers assigned to the Misdemeanor Division, but with other lawyers assigned to other courts and other divisions. None of the affidavits of the lawyers assigned to the Misdemeanor Division purports to make any showing that continuing to accept appointments in the Misdemeanor Division will damage any lawyer's ability to effectively represent any client. In essence, the Public Defender is asking that lawyers be relieved from the Misdemeanor Division because their continued appointments there will damage *other* lawyers' ability to effectively represent their clients. That does not constitute the clear and convincing proof required by the Rule that a lawyer must show that his or her own ability to effectively represent clients would be compromised by accepting a new appointment.

Second, and more importantly, the Public Defender's own figures undercut his argument. He concedes that his lawyers are currently effectively representing clients, but claims that continued or new appointments will compromise his lawyers' ability to do so going forward. For example, he writes, "Without the requested relief the lawyers in the P.D. office cannot *continue* to provide the constitutionally required effective assistance of counsel to those persons they are appointed by the court to represent." (Petition at 2.) If, as the Public Defender concedes, the Public Defender's

attorneys are currently providing effective representation, one would assume that they would continue to do so if their caseload stayed the same or diminished.

The Public Defender's figures show, in fact, that the Public Defender's caseload shrank from FY2006 to FY2007 and again from FY 2007 to FY2008.

TABLE 1	2006		2007		Difference in # Cases, 2007 from 2006	% Difference
	FILINGS/ CHARGES	CASES	FILINGS/ CHARGES	CASES		
Gen Sessions - New	19,378	12,028	19,831	10,791	-1,237	-10
Gen Sessions - Disposed	18,443	11,552	18,467	10,148	-1,404	-12
GS Misdemeanors - New	9,180	6,350	9,171	5,760	-590	-9
GS Misdemeanors - Disposed	8,956	6,194	8,478	5,347	-847	-14
Criminal - New	4,378	1,814	3,499	1,284	-530	-29
Criminal - Disposed	3,781	1,672	3,689	1,287	-385	-23
Juvenile - New	1,900	1,398	1,749	1,169	-229	-16
Juvenile - Disposed	1,635	1,178	1,558	1,047	-131	-11

TABLE 2	2,006	2,007	2,008
Total New Filings/Charges	25,656	25,079	22,678
Total New Cases	15,240	13,244	11,511
Difference in # Cases, 2007 from 2006	-1,996		
% Difference, 2007 from 2006	-13		
Difference in # Cases, 2008 from 2007	-1,733		
% Difference, 2008 from 2007	-13		
Difference in # Cases, 2008 from 2006	-3,729		
% Difference, 2008 from 2006	-24		

The figures in Tables 1 and 2 are taken from the petition as well as a supplemental affidavit to the petition filed by Issac Merkle. Table 1 shows that the Public Defender's caseload shrank in every category from FY2006 to FY2007. General Sessions caseloads shrank both overall and in the Misdemeanor Division by about 10% from FY2006 to FY2007. In the criminal courts, where the Public Defender maintains the crisis exists, caseloads shrank well over 20%. Table 2 shows that the

Public Defender's caseload continues its sharp downward trend in 2008. These declining caseloads cast serious doubt upon the Public Defender's claim that his lawyers in General Sessions Misdemeanor Division will be unable to effectively represent their clients should they continue to be appointed to cases.

In sum, the Public Defender's petition and its supporting documentation generally portray an undoubtedly heavy albeit shrinking caseload, but do not clearly and convincingly demonstrate that the effectiveness of the Public Defender's lawyers in Misdemeanor Division will be compromised by their continuing to accept appointments in that court. As Chief Justice Lyle Reid of Tennessee's Supreme Court wrote some fifteen years ago in a series of memoranda on a similar issue involving the Public Defender:

> Heavy work load of the public defender's alone is not an acceptable reason to appoint private counsel. However, if the immediate continuing responsibilities of that office prevent the public defender from rendering effective assistance of counsel or otherwise performing the duties of that office, it can be considered a reason for appointment of private counsel [in the cases at hand].

November 20, 1991, Memorandum to State Trial Judges Exercising Criminal Jurisdiction (copy attached). For all the reasons set out above, the petition has failed to make a clear and convincing case that the Public Def cannot continue to render effective assistance of counsel in the Misdemeanor Division. Accordingly, the petition should be dismissed.

III. CONCLUSION

The petition should be dismissed for two reasons: the Knox County General Sessions Judges lack jurisdiction to sit as a panel and supply the Public Defender's requested relief of wholesale withdrawal from the Misdemeanor Division, and the petition in any event fails to make its case by clear and convincing evidence.

Respectfully Submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter

DOUGLAS EARL DIMOND
Senior Counsel
General Civil Division
P.O. Box 20207
Nashville, TN 37202
(615) 532-7913
BPR No. 17953

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing response was forwarded by first-class U.S. Mail , postage paid, and/or electronic mail to:

T. Maxfield Bahner
1000 Tallan Building, Two Union Square
Chattanooga, TN 37402-2500

Hugh J. Moore, Jr.
1000 Tallan Building, Two Union Square
Chattanooga, TN 37402-2500

D. Aaron Love
1000 Tallan Building, Two Union Square
Chattanooga, TN 37402-2500

Mark E. Stephens
District Public Defender
1101 Liberty Street
Knoxville, TN 37919

on this 6th day of June 2008.

Douglas Earl Dimond by
DOUGLAS EARL DIMOND
Senior Counsel
Cynthia L Pasbuck
w/perm.

PEACE
LIBERTY
JUSTICE

The Knox County Public Defender's
COMMUNITY LAW OFFICE

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JUN 18 2007
Public Defenders Conference

June 15, 2007

Honorable Charles Cerny, Presiding Judge
Honorable Tony Stansberry
Honorable Bob R. McGee
Honorable Geoff Emery
Hononorable Andrew Jackson, VI
400 Main Avenue, City County Building
Knoxville, TN 37902

Re: Continued Representation of Citizens in the Knox County General Sessions Courts, Misdemeanor Division, by the Knox County Public Defender and Staff.

Dear Judge Cerny:

For the last 17 years, the lawyers in this office have worked tirelessly to provide the indigent citizen accused of crime with quality legal representation. Often at great personal sacrifice they have pressed on so that justice might become a reality for the clients they represent. At the close of each fiscal year, I conduct an internal office audit to make sure that we have adequate resources to enable the lawyers in this office to provide the quality of service to the clients that the constitution and laws of this state contemplate and demand. A review of caseloads is a part of this internal audit.

As you are likely aware, for the last several years, my office has experienced an increase in caseloads. In fiscal year 04/05 our total cases exceeded 21,000. That number included 9,175 cases in Knox County General Sessions Court Misdemeanor Division; 6,203 cases in Felony Division; and, 3,281 cases in DUI Division. In fiscal year 05/06 our total caseload approached 23,000 cases. That number included 9,204 cases in Misdemeanor division; 6,816 cases in Felony Division; and, 3,327 cases in DUI Division. Since fiscal year 01/02, the CLO has experienced an increase of 5,072 cases in General Sessions Court, while during that same period of time, we have been unable to increase staffing for those courts.

These oppressive caseloads have placed an incredible strain on my staff. During our first ten years of operation, the CLO experienced very little employee turnover. However, in the last three years alone, we have lost 20 employees, with the 21th advising me that she will be leaving in August.

MARK E. STEPHENS *Public Defender* 1101 Liberty Street Knoxville,TN 37919 *Ph* 865-594-6120 *Fax* 865-594-6169 www.pdknox.org

Our current legal staff consists of 23 lawyers, five of whom have practiced less than 18 months. One of those lawyers has not yet been issued a law license and is practicing under supervision while another lawyer has never represented a client in her legal career.

Due to staffing limitations, we have been unable to implement a vertical representation model at the Community Law Office. Though vertical representation is the nationally preferred representation model, allowing for continuity of representation, reduction in the time from arrest to disposition, and promoting institutional efficiencies, we are instead forced to assign lawyers to courts, and to "pass off" clients as the client's case moves through a particular court to the next. We currently have 12 lawyers assigned to General Sessions Court, (five each assigned to both misdemeanor and felony court, while two are assigned to DUI court). With the caseloads indicated above, each attorney in misdemeanor court is asked to handle approximately 1,841 cases in a year. During the same period, each attorney in DUI court is assigned 1,664 cases, and in felony court, each attorney is assigned 1,363 annually.

In 2004, the District Attorney General's Conference reported to the Comptroller of this state that there are 1650 annual working hours for their assistants. If that's the case, then my lawyers in misdemeanor court have approximately 53 minutes of time to spend on each case, 59 minutes per DUI case, and 72 minutes per felony case.

I have spent considerable time reviewing what a public defender's ethical and professional duty is to his or her client. This review has included a reading of the standards established by the American Bar Association, the National Legal Aid and Defender Association, and the National Advisory Commission on Criminal Justice Standards and Goals. I have read those materials in light of our Tennessee Rules of Professional Conduct and our Tennessee Supreme Court Rules. Without question these professional practice standards make clear that an attorney has an ethical, moral and professional duty to assure that he or she has sufficient available time, resources, knowledge and experience to provide the quality and zealous representation of a defendant in a particular matter.

The American Bar Association Standards for Criminal Justice – The Defense Function, Standard 4-1.3 – Delays; Punctuality; Workload, provides that defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest and the speedy disposition of charges, or may lead to the breech of professional obligations.

At the same time, Rule 13, Tennessee Supreme Court Rules Section 1(e)(4)(D) states that the court shall not make an appointment if counsel makes a clear and convincing showing that adding the appointment to counsel's current workload would prevent counsel from rendering effective representation in accordance with the constitutional and professional standards.

In the course and scope of a public defender's representation of a citizen accused of crime, constitutional, statutory, and professional standards require public defenders, at a minimum:

- Establish a relationship of trust and confidence with the accused;
- Communicate with the client, discussing, among other things, the objectives of the representation;
- Ensure privacy essential for confidential communication between defense counsel and client;
- Seek to determine all relevant facts known to the accused as soon as practical;
- Inform the accused of all his or her rights at the earliest possible opportunity and take all necessary actions to vindicate such rights;
- Consider all procedural steps, which in good faith may be taken on behalf of the client to include:
    - seeking pretrial release where appropriate;
    - obtaining psychiatric examinations when needed;
    - moving to change venue or moving for a continuance when needed;
    - moving to suppress illegal obtained evidence;
    - moving to severe jointly charged defendants.
- Conduct a prompt investigation of the circumstances of the case, exploring all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction;
- Avoid interviewing a prospective witness except in the presence of a third person;
- After being informed fully of the facts and the law, defense counsel should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome. Defense counsel should explore the possibility of an early diversion of the case from the criminal process through the use of other community agencies;
- Refrain from recommending to a defendant to accept a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial;
- Keep the accused advised of developments arising out of plea discussions conducted with the prosecutor; and,
- Promptly communicate and explain to the accused all significant plea proposals made by the prosecutor.

Certainly, the duties owed to a client by an assistant public defender extend beyond those enumerated above, but this indicates a partial listing of some of the many functions public defenders owe each client, in each case. The commentary to ABA Standards Relating to the Defense Function 4-3.5 states clearly so as to avoid any misunderstanding, "...the basic rule that must guide every lawyer is (that) the lawyer's total loyalty is due each client in each case."

The National Advisory Commission (NAC) on Criminal Justice Standards and Goals was appointed by the Law Enforcement Assistance Administration and charged with the responsibility of formulating for the first time national criminal justice standards and goals for

crime reduction and prevention at state and local levels. The National Advisory Commission issued six extensive reports, each developed by a separate task force, on a number of topics including the criminal justice system and the courts. The report of the task force on the courts set standards for the flow of cases through each stage of the criminal justice process, as well as basic standards for each of the system's component parts, including courts, court administration, prosecution and defense.

The NAC report, particularly Standard 13.12 – Workload of Public Defenders, has been regularly and consistently sited as the benchmark for determining appropriate caseloads for public defender organizations. Standard 13.12 indicates that the caseload of a particular public defender should not exceed the following:

1. Felonies per attorney per year: not more than 150;
2. Misdemeanors (excluding traffic) per attorney per year: not more than 400;
3. Juvenile Court cases per attorney per year: not more than 200;
4. Mental Health Act cases per attorney per year: not more than 200;
5. Appeals per attorney per year: not more than 25.

Standard 13.12 mandates that if a public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, **"he should bring this to the attention of the court."** The Standard clarifies that if the court accepts such assertions, **"the court should direct the public defender to refuse to accept or retain additional cases for representation by his office."**

Following the publication of the NAC Standards, the National Legal Aid and Defender Association reviewed the issue of caseloads in public defender offices. That nationally recognized body adopted the same set of caseload standards for public defender offices across the country.

A review of the caseloads of the Knox County Public Defender's Community Law Office over the last five years reveals the following:

FY01-02:	16,976 cases
FYO2-03:	17,606 cases [an increase of 4% from the previous year];
FY03-04:	18,649 cases [an increase of 6% from the previous year]
FYO4-05:	21,195 cases [an increase of 13% from the previous year];
FY05-06:	22,735 cases [an increase of 7% from the previous year]

In January, 2007, Tennessee Comptroller, John G. Morgan, released the updated Tennessee Weighted Caseload Study of District Public Defenders. In that updated study, current caseloads and dispositions were compared against current staffing of District Public Defender Offices in light of recognized national caseload standards (the Comptroller used the NAC standards discussed above). The study concluded that the

Knox County Public Defender's Community Law Office needed an additional 31 assistant public defenders in order to provide the representation mandated by the United States and Tennessee Constitutions. The study showed that Knox County had the most understaffed public defender's office in the state.

In February, 2007, the same Comptroller's Office released an updated weighted caseload study for the Tennessee District Attorneys. Mr. Morgan's study showed that the Knox County District Attorney's Office was overstaffed, in fact, it was the most overstaffed District Attorney's Office in the state.

Standard 4-1.2 Function of Defense Counsel as set out in the American Bar Association Standards for Criminal Justice – the Defense Function speaks of a lawyer's professional integrity and detachment. Specifically, the commentary provides that such professional integrity and detachment is furthered by counsel's actions, independent of client representation, to engage in necessary and appropriate law reform activities or to seek to remedy injustices that counsel sees in the administration of criminal justice generally in his or her jurisdiction.

Pursuant to that guideline, over the last several years, I have actively engaged in local efforts to increase criminal justice system efficiencies and promote justice in our system. Whether real or imagined, it seems that the increasing political, economic and social pressures on the criminal justice system have led to demands that public defenders act as "team players," to keep the system functioning even at the expense of individual clients' interests. My participation in these "efficiency efforts" have been done on my part by balancing the risk of compromising the quality of representation we provide to our clients against trying to ameliorate systemic difficulties. I believe that any effort on the part of the CLO directed at systemic reform cannot be made at the expense of the public defender's primary responsibility, which is to provide quality, zealous representation for the citizen accused.

For 17 years I have been the elected Public Defender for the Sixth Judicial District Public Defender's Office. Many young lawyers have launched their legal careers as a member of my staff. Most of these young lawyers come to the office recognizing that they will be faced with crushing caseloads. They realize that the work they do may not be appreciated or understood by community members. They understand that our clients can sometimes be skeptical as to the quality of service they will receive and might not fully understand the efforts the lawyers make on the clients' behalf. They understand the characterizations that public defenders are somehow less than "real lawyers." Nevertheless, they come to this office with an energy and idealism that allows them to forge full speed ahead to honor what we believe to be the greatest criminal justice system functioning in the world today.

However, our public defenders struggle with the intersection of idealism and reality. They face the harsh reality of what has become a system in chaos. It is important, at that moment of their professional development, to be reassured that there is someone in the criminal justice system who above all else and at all times will honor what the system stands for: someone who, above all else, will protect the cornerstone principles of both procedural and substantive due process.

We agree with our brother Stephen Bright, former Director of the Southern Center for Human Rights, when commenting on one's constitutional right to counsel – *Gideon's Promise* – he said, "No constitutional right is celebrated so much in the abstract and observed so little in reality."

I have an ethical duty as the elected Public Defender to see to it that my office does not accept an appointment in a case where my attorneys would not be able to render effective representation to that client or to existing clients. It is with that duty in mind that I submit to you that the current caseload of the Knox County Public Defender's Community Law Office has grown to the point that – in light of present staff and funding – we can no longer meet our professional, ethical and moral obligations to the clients of this office as contemplated by the laws and performance standards currently in place. The time allotted each case is simply insufficient to perform all the necessary duties a lawyer has sworn an oath to perform on behalf of each and every client. The time has come, I believe, for me, as the elected public defender, to take the necessary steps to assure the clients that we represent that their constitutional rights will be respected. Consequently, on July 1, 2007, this office will suspend accepting any new appointments in the Misdemeanor Division of the Knox County General Sessions Court. We stand ready, pursuant to Rule 13, Section 1(e)(4)(D) of the *Tennessee Supreme Court Rules*, to make our showing by clear and convincing evidence that "adding appointments to our legal staff's current workload will prevent our attorneys from rendering effective representation in accordance with constitutional and professional standards." It is my intention to continue this course of action until our staffing improvements are such that we can accept new clients from misdemeanor court and afford them the constitutional services to which they are entitled, or until our caseloads from other courts are so reduced as to allow for the re-assignment of existing legal resources providing CLO attorneys sufficient time to provide competent representation in misdemeanor court.

I have chosen this course for three reasons:

(1) The potential liability for clients in misdemeanor court is generally lower than in other courts in Knox County. It makes sense to me to utilize as fully as possible the institutional capacities and strengths of this office to the greatest extent possible by focusing on those cases with higher potential liability to the client;

(2) A high number of cases in misdemeanor court are resolved in that court. Cases typically do not move from misdemeanor court to criminal court. Consequently, maintaining continuity of representation will be easier with these cases, than with cases from another division of sessions court; and,

(3) The state compensates private lawyers handling indigent cases on an appointed basis at a higher rate where the client is charged with a felony. It would be more cost efficient for the state for the public defender office (where the average cost per case is approximately $190 per case) to handle felony cases leaving the state to compensate private lawyers for misdemeanor cases at the lower rates.

I write this letter in an attempt to outline the current difficulties faced by this office as a result of ever increasing caseloads. I believe to continue to operate under the present circumstances is

contrary to my ethical and legal responsibilities. Accordingly, I believe the action I have outlined in this letter is the only responsible and ethical response available. I look forward to a hearing as contemplated by Rule 13 of the *Tennessee Supreme Court Rules*.

Sincerely,

Mark E. Stephens

Mark E. Stephens
District Public Defender

MES/ks

cc: Hon. Jeffrey S. Henry, Executive Director
Tennessee District Public Defenders Conference

Not Reported in S.W.3d
Not Reported in S.W.3d, 2004 WL 370299 (Tenn.Ct.App.)
(Cite as: Not Reported in S.W.3d, 2004 WL 370299 (Tenn.Ct.App.))

Caldwell v. Wood
Tenn.Ct.App.,2004.
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SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.
Richard CALDWELL and Wife, Sheila Caldwell
v.
Tim WOOD and Julie Wood d/b/a Wood's Custom Floors.
No. W2003-00303-COA-R3-CV.

Assigned on Brief, Oct. 21, 2003.
Feb. 27, 2004.

Appeal from the Circuit Court for Madison County, No. C-02-309, Division III; Roger A. Page, Judge.

A. Russell Larson, Jackson, Tennessee, for the appellants, Tim Wood and Julie Wood, d/b/a Wood's Custom Floors.
J. Brandon McWherter, Jackson, Tennessee, for the appellees, Richard Caldwell and wife, Sheila Caldwell.

HOLLY M. KIRBY, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

OPINION

HOLLY M. KIRBY, J.

*1 This case involves the subject matter jurisdiction of General Sessions Courts. The plaintiffs filed a lawsuit against the defendants in General Sessions Court. The defendants failed to appear at trial. The General Sessions Court entered a default judgment against the defendants. The defendants filed a motion to set aside the judgment, which the General Sessions Court granted. The plaintiffs appealed to the Circuit Court. The Circuit Court reversed the General Sessions Court's order setting aside the judgment. We affirm the decision of the Circuit Court, holding that section 16-15-727 of the Tennessee Code Annotated, which authorizes the General Sessions Courts to correct judgments, does not authorize the General Sessions Courts to set aside judgments.

Plaintiffs/Appellees Richard Caldwell and Sheila Caldwell (collectively "the Caldwells") filed suit in General Sessions Court on March 25, 2002 against Defendants/Appellants Tim Wood and Julie Wood d/b/a Wood's Custom Floors ("Wood's Floors") for breach of contract, breach of express warranty, fraud, violation of the Tennessee Consumer Protection Act, and misrepresentation, plus attorney's fees and court costs. Wood's Floors failed to make an appearance on the designated trial date, and the General Sessions Court entered a default judgment against Wood's Floors, dated July 12, 2002.

On July 31, 2002, Wood's Floors filed a motion in the General Sessions Court for relief from the judgment, pursuant to Rule 60.02 of the Tennessee Rules of Civil Procedure. In its motion, Wood's Floors explained that it failed to appear at trial because its original attorney withdrew from the case on June 6, 2002 and it was unaware of the trial date. On August 27, 2002, the General Sessions Court granted relief from the judgment on grounds of excusable neglect and surprise. The General Sessions Court did not grant the relief from the

judgment pursuant to Rule 60.02; rather, it relied on section 16-15-727 of the Tennessee Code Annotated. In a letter addressed to both parties, the General Sessions judge noted that section 16-15-727 grants "General Sessions Courts ... the same power to correct judgments rendered to them as courts of record have ."

On August 30, 2002, the Caldwells filed a notice of appeal to the Circuit Court, appealing the General Sessions Court's order setting aside the judgment. In their appeal, the Caldwells argued that neither section 16-15-727 nor Rule 60.02 grant the General Sessions Courts the authority to set aside their judgments. After reviewing the pleadings and arguments of counsel, as well as the procedural history and applicable law, the Circuit Court held that the General Sessions Court did not have the power to set aside its own judgment and therefore reversed the General Sessions Court's order setting aside the default judgment. The Circuit Court noted: "It is undisputed that 10 days had elapsed after the Judgment was entered without an appeal to Circuit Court. Accordingly, the jurisdiction of the General Sessions Court over this matter had ended."From the Circuit Court's order, Wood's Floors now appeals.

*2 On appeal, Wood's Floors argues that the Circuit Court erred in holding that section 16-15-727 does not authorize the General Sessions Court to set aside its own judgment. In this appeal, there are no factual issues, only questions of law, which are reviewed *de novo* with no presumption of correctness. ***Wilkins v. Kellogg Co.,*** 48 S.W.3d 148, 151 (Tenn.2001).

The jurisdiction of General Sessions Courts is limited to that set out by statute. ***Ware v. Meharry Med. Coll.,*** 898 S.W.2d 181, 183-84 (Tenn.1995). Thus, for the General Sessions Courts to have subject matter jurisdiction to set aside a judgment, there must be statutory authority for the action. It is undisputed that the Tennessee Rules of Civil Procedure, including the procedure under Rule 60.02 to set aside judgments, are not applicable to General Sessions Courts. Tenn. R. Civ. P. 1.

The parties cite no statute expressly permitting a General Sessions Court to set aside its judgment. ***See***Tenn.Code Ann. §§ 16-15-101 through 16-15-5012 (1994 & Supp.2003); ***J.W. Gibson Co. v. Eagle Instruments, Inc.,*** 1999 WL 552879, at *1 (Tenn.Ct.App. July 28, 1999).Section 16-15-727 of the Tennessee Code Annotated does, however, authorize the General Sessions Courts to *correct* their own judgments:

General Sessions Courts have the same power to correct the judgments rendered by them that courts of record have. The party asking the correction shall give the adverse party five (5) days' notice of the time and place of the intended application to correct the judgment, and from which judgment, so corrected, either party may appeal, or stay it, as in cases of original judgments before general sessions courts.

Tenn.Code Ann. § 16-15-727 (1994). The question becomes, then, whether "correcting" a judgment includes setting aside a judgment.

The interpretation of a statute requires courts to " 'ascertain and give effect to the legislative intent' " behind the statute. ***Sharp v. Richardson,*** 937 S.W.2d 846, 849 (Tenn.1996) (quoting ***Cronin v. Howe,*** 906 S.W.2d 910, 912 (Tenn.1995)). When the language of the statute is unambiguous, the legislative intent must be determined from the face of the statute, adopting the "natural and ordinary" meaning of the language therein. ***Davis v. Reagan,*** 951 S.W.2d 766, 768 (Tenn.1997); ***Westland W. Cmty. Ass'n v. Knox County,*** 948 S.W.2d 281, 283 (Tenn.1997).

In ***Travelers Indem. Co. v. Callis,*** the Tennessee Supreme Court outlined the General Sessions Courts' jurisdictional limits, determining that a General Sessions Court does not have the power to quash its own judgment. ***Travelers Indem. Co. v. Callis,*** 481 S.W.2d 384, 385 (Tenn.1972). General Sessions Courts were established as a replacement for justice of the peace courts. They share some attributes of the courts they replaced. ***Ware v. Meharry Med. Coll.,*** 898 S.W.2d 181, 183-84 (Tenn.1995); ***Weaver v. Cromer,*** 392 S.W.2d 835, 836 (Tenn.Ct.App.1965). The ***Callis*** Court considered this background in determining whether a General Sessions Court could quash its judgment, reviewing whether justices of the peace were permitted to quash execution of their judgments. ***Callis,*** 481 S.W.2d at 384. The ***Callis*** Court held:

*3 "Their jurisdiction is limited to the rendition of the judgment, the granting of an appeal, the stay and issuance of the execution, and the issuing of writs of *scire facias* where proper. The theory of their jurisdiction is that it extends only to the limits defined by statute law, and that the giving to them jurisdiction of a subject does not carry with it all those general powers of making that jurisdiction effectual, or of preventing its working injustice, which belongs to courts of general jurisdiction. When a justice or General Sessions Court renders judgment in a case and adjourns, the court is at an end, and the court has no further power over it except what the statutes give. The court cannot after that day grant a new trial, or in any way prevent the consequences of its acts, however erroneous [they] may be. But the court may correct merely clerical errors in its judgments upon the application of a party and proper notice to the other party."

Id. at 385 (quoting Caruthers, ***History of a Lawsuit*** (8th ed.)). Thus, justices of the peace, the predecessors to modern General Sessions Courts, were authorized to modify their own judgments only to the extent of correcting "clerical errors."

Section 16-15-727 of the Tennessee Code Annotated clearly authorizes the General Sessions Courts to correct their judgments. The plain language of the statute, however, simply does not address the setting aside of judgments. Wood's Floors cites no case in which this statute, or any other, has been deemed to authorize the General Sessions Courts to set aside their own judgments. ***See Gibson,*** 1999 WL 552879, at *1-2. In the absence of express statutory authorization, we must conclude that the General Sessions Court in this case was without authority to set aside its judgment. Thus, the decision of the Circuit Court, reversing the order of the General Sessions Court setting aside its judgment, must be affirmed.

The Caldwells request attorney's fees and costs of this appeal. This request is denied.

The decision of the Circuit Court is affirmed. Costs are taxed against Defendant/Appellants Tim Wood and Julie Wood d/b/a Wood's Custom Floors, and their surety, for which execution may issue if necessary.

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END OF DOCUMENT

Supreme Court
State of Tennessee
Nashville 37219

CLETUS W. McWILLIAMS
EXECUTIVE SECRETARY

November 20, 1991

Judge Bob McGee
Knox County General Sessions Court
Division III
City-County Building
400 Main Street
Knoxville, TN 37902

Re: The Matter of Continued Indigent Representation by the District Public Defender's Office in Knox County General Sessions Court

Dear Judge McGee:

I acknowledge receipt of your letter of November 12, 1991, wherein you enclose a copy of a motion of the District Attorney Defender, Mark Stevens, which has been filed in your court and which has been set for hearing before the four (4) general sessions judges of Knox County on Friday, November 22, 1991, at 9:30 a.m. You state that the gist of the motion is that Mr. Stevens' office is so overwhelmed with cases that he cannot adequately represent new clients. You have offered the opportunity to either myself or any duly appointed representative of the Supreme Court to attend and participate in that hearing and have solicited any advice which we may offer as to how to properly resolve this matter.

The decision with regard to the appointment of counsel for indigent defendants in criminal cases is essentially and ultimately a judicial decision which addresses the discretion of the trial judge. Since the appointment of counsel for indigent defendants involves State revenue

administered by this office, we have deemed it appropriate to remind the trial courts regarding certain administrative practices. The memoranda of July 12, 1991, and July 25, 1991, sent to all trial judges exercising criminal jurisdiction address the appointment of counsel where there are two or more joint defendants. These memos were prompted by the practice in some counties where separate counsel were being appointed automatically without inquiry with regard to the possibility of a conflict of interest. In those memos the attention of trial judges was called to the 1990 amendments to T.C.A. § 8-14-205 regarding this matter. We emphasized that neither the law nor the practice with regard to judicial ethics, conflict of interest, or the representation of indigent defendants had been changed.

Those memos addressed primarily the representation of multiple defendants rather than the conditions described in your letter. However, the memo of July 25, 1991, states:

> Heavy work load of the public defender's office alone is not an acceptable reason to appoint private counsel. However, if the immediate or continuing responsibilities of that office prevent the public defender from rendering effective assistance of counsel or otherwise performing the duties of that office, it can be considered a reason for appointment of private counsel in cases involving multiple defendants.

As previously stated, the need for the appointment of counsel and the selection of counsel is essentially a judicial function about which this office cannot specifically advise you. However, the communications from us recognize, implicitly and explicitly, that when the public defender is not available to be appointed a private attorney should be appointed, and, most importantly, ALL OTHER CONSIDERATIONS MUST BE SUBORDINATED TO THE RIGHT OF AN ACCUSED TO HAVE EFFECTIVE ASSISTANCE OF COUNSEL AS REQUIRED BY LAW.

Please be advised that since the issue pending before your court is primarily a judicial matter, neither myself nor any representation of the Supreme Court will attend or participate in the hearing, though we do appreciate the courtesy of your invitation.

With kindest regards, I remain

Very sincerely yours,

Cletus W. McWilliams
Executive Secretary to the
Tennessee Supreme Court

CWMcW:LR:JW